



PUBLIC NOTICE

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Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use

Notice and Filing Procedures For December 11-December 18, 2009, NCE Reserved FM Allotment Filing Window

The Media Bureau (the "Bureau") announces a filing window for applications for noncommercial educational ("NCE") FM new station construction permits. The window is available for existing, vacant FM allotments on Channels 221 through 300 (the "Non-reserved FM Band") that have been reserved for NCE use. The window will open on Friday, December 11, 2009, and close on Friday, December 18, 2009. This Public Notice also announces procedures and filing requirements that will apply to the NCE reserved FM allotment filing window.

Scope. Non-reserved FM Band channels reserved exclusively for NCE use appear with an asterisk designation in the Table of FM Allotments, Section 73.202 of the Commission's Rules.¹ Attachment A to this Public Notice identifies the pertinent vacant reserved FM Channels available for application in this window.² Only FM allotments listed in Attachment A may be applied for at this time.

¹ 47 C.F.R. § 73.202. The Commission revised the standards for reserving an FM channel for NCE use in MM Docket 95-31. *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995); Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998); Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Report and Order*"); Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) ("*NCE MO&O*"); Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 3833 (2002); Second Report and Order, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"). The Commission will reserve a channel in the Table of FM Allotments for the exclusive use of NCE stations if a proponent for reservation demonstrates that an NCE station is technically precluded from using already-reserved channels and that it will provide needed NCE service in a given area, according to defined standards. *NCE Second Report and Order*, 18 FCC Rcd at 6703-05. See also 47 C.F.R. § 73.202(a)(1).

² In the *NCE Second Report and Order*, the Commission extended the revised reservation policy to existing, vacant FM allotments for which an allocation proceeding had been initiated, as determined by the release of a Notice of Proposed Rulemaking, before the effective date of the standards, August 7, 2000. The Media Bureau then opened a window accepting reservation showings for approximately 500 FM channels. *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, 18 FCC Rcd 19600 (MB 2003). In response, 129 petitioners sought to reserve 91 vacant FM allotments. The reserved FM channels listed in Attachment A ensued from these case-by-case Commission allotment decisions. See 47 C.F.R. § 73.7000.

Applicants that have not previously filed an NCE FM application will find useful, step-by-step information about the application and licensing process at www.fcc.gov/mb/audio/howtoapply.html.³

Electronic Filing Instructions. Applications for new FM NCE facilities, must be filed **between December 11, 2009, and December 18, 2009**. Applications must be filed electronically on Form 340. Applicants must complete all sections of the application form. All Form 340 applications and amendments must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system.

The CDBS electronic filing system has numerous business rules and other edit checks that ensure that filings are substantially complete when filed. When filing a new proposal, applicants must select "New station" on the Pre-form for Form 340 (Question 2 – Application Purpose). Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/e-file>

The Guide can be accessed by clicking on the "Broadcast Radio and Television Electronic Filing System (CDBS)" link at the electronic filing web site, above. This action will take the user to the Media Bureau's CDBS Electronic Filing System site. The user should then click on the "User's Guide" link. Internet access to the CDBS online electronic forms filing system requires, at a minimum, a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

Applicants are encouraged to access the system and prepare their applications and amendments at their earliest convenience. Applicants may begin to complete applications immediately. Applicants are also encouraged to submit their applications early during the window to ensure proper submission. Applications and amendments filed during the window will not be made available to the public until after the close of the filing window. To ensure the security of its application, it is important that the applicant shares its CDBS account passwords with only those individuals who are authorized to view and/or modify proposals in progress.

To complete the filing process, applicants must select the specific application under "Work in Progress" and then click on the "File Form" button. Applicants that have successfully filed Form 340 will immediately receive a CDBS response similar to the following:

FCC MB – CDBS Electronic Filing
Application Reference Number: 20091211AAS
Successfully filed at Dec 11 2009 12:01AM

Applicants that believe they have filed correctly and have not received such a message from the electronic filing system should log into their CDBS account and determine the status of the application. If the status is other than "Ready" or "Filed," the application has NOT been properly filed and will NOT be processed.

³ Applicants generally craft their technical proposals with the assistance of consulting engineers. One source for locating consulting engineers is the Association of Federal Communications Consulting Engineers, <http://www.afcce.org/Members.htm>.

The Commission staff will return applications and amendments not submitted in accordance with the procedures described in this Public Notice. All applications filed in this window are exempt from filing fees. Nevertheless, the staff may be unable to process some applications due to “red light” issues.⁴ Applicants are encouraged to check the red light status of their FCC Registration Number (FRN) by using the following web site immediately after filing FCC Form 340 in order to avoid processing delays:

www.fcc.gov/redlight

Comparative Consideration of Applications. Mutually exclusive applications for NCE stations operating on reserved channels will be resolved pursuant to the application and selection procedures in Subpart K of Part 73 of the Rules.⁵ Maximum qualifications for new applications filed in the window are established at the time of filing.⁶ The Commission will take into account any negative change in an applicant’s comparative position after the close of the window. The Commission will not take into account any enhancement in an applicant’s comparative position after the close of the window.⁷

Technical Requirements. Specifications. When filing the Form 340 application in this window, NCE applicants must specify the exact community of license, channel and class as designated in the Table of FM Allotments and specified in Attachment A.

Reservation Service Requirements. The Commission reserves a Non-Reserved FM Band allotment if the petitioner successfully demonstrates that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations. In the *NCE Report and Order* the Commission adopted a third test for channel reservation.⁸ Under this third channel reservation standard, a reservation proponent must demonstrate that it is technically precluded from using a reserved channel and would provide a first and/or second NCE radio service to at least ten percent of the population within the 1mV/m contour of its proposed station. In the *NCE Second Report and Order*, the Commission specifically advised prospective NCE applicants that the first or second NCE service requirement remains applicable at the application stage.⁹ Therefore, if the third channel reservation standard - the first or second NCE service provisions – served as the basis for reservation of the allotment, applicants for that allotment must provide a first or second NCE service to at least ten percent of the population within the proposed station’s service area and that population must be at least 2000 persons.

⁴ Applications filed in the window will be subject to the Commission’s “Red Light Rule” implementing the Debt Collection Improvement Act. See 47 C.F.R. § 1.1910. Under this Rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission.

⁵ 47 C.F.R. §§ 73.7000 - 73.7005.

⁶ See 47 C.F.R. § 73.7003(e).

⁷ *Id.*

⁸ See *supra* notes 1 and 2.

⁹ See *NCE Second Report and Order*, 18 FCC Rcd at 6705 (“Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission’s competitive bidding licensing procedures.”). See also 47 C.F.R. § 73.202(a)(1)(ii).

To facilitate compliance with this requirement, allotments that were reserved by means of the third reservation test are identified with a double asterisk in Attachment A.

Documentation Supporting Point System Claims. An applicant must place in its public inspection file documentation that supports each of its point system claims.¹⁰ An applicant also must submit copies of this documentation to the Commission.¹¹ The Bureau strongly recommends that applicants include copies of this documentation as exhibits to their application submissions to satisfy this filing requirement.

LPFM Divestiture Pledges. A divestiture pledge is generally ineffective as a mechanism to avoid the attribution of broadcast interests held at the close of the window for the purpose of qualifying for points under the NCE diversity criterion.¹² The Commission, however, has carved out an exception for non-fill-in translators if the applicant pledges to request the cancellation of the translator authorization upon the new NCE FM station's commencement of operations.¹³ Further, in the *NCE Omnibus Order*, the Commission waived the Rules to accept a contingent pledge to divest a Class D station license prior to the commencement of operations by a same-area full service NCE FM station.¹⁴

We recognize that LPFM stations may find themselves in circumstances similar to those on which the Class D Rule waiver was based. Specifically, an LPFM licensee may be seeking substantial service improvements by surrendering an authorization that is, in significant respects, secondary to full service station authorizations and applications. We also note that the Rules prohibit an LPFM station from holding an attributable interest in any other non-LPFM broadcast authorization.¹⁵ Thus, in any event, the Rules would require the divestiture of an LPFM authorization prior to the grant of an NCE FM full service construction permit. An applicant that seeks to avoid the attribution of an LPFM interest must as part of its window-filed application: (1) propose the divestiture of the LPFM interest prior to grant of its NCE FM construction permit application; and (2) request a waiver of the Rule that would otherwise result in the attribution of the LPFM interest in the applicant's diversity criterion point system determination.

Tie Breakers. When reporting pending applications in Section V(2), applicants should include the subject application and all other applications that have been, or will be filed in the window. Applicants should include any application that has not been granted, dismissed, or denied prior to the opening of the window. Applicants should not include requests to participate in an auction filed on Form 175.

¹⁰ See *NCE Report and Order*, 15 FCC Rcd at 7423; see also Form 340, Section IV and Instructions for Form 340, Section IV.

¹¹ *Id.*

¹² See *NCE MO&O*, 16 FCC Rcd at 5109, n.24.

¹³ *Id.* at 5102-03.

¹⁴ See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6120 (2007) ("*NCE Omnibus Order*").

¹⁵ See 47 C.F.R. § 73.860.

Site Assurance. At the time its application is filed, an applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities.¹⁶ Each applicant should be prepared to submit supporting documentation upon Commission request.

Financial Qualifications. Form 340 requires each applicant for a new NCE FM station to certify that, at the time its application is filed, the applicant has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate it for three months, without additional funds.¹⁷ Each applicant should be prepared to submit supporting documentation upon Commission request.

Application Cap. There is no application filing cap in this window.

Filing Freeze. Concurrently with the release of this Public Notice, the Bureau is releasing a Public Notice announcing a limited minor change application filing freeze. The Bureau will not accept minor change applications after 11:59 p.m., November 25, 2009. The freeze will continue in effect until the close of the window. Due to their potentially preclusive impact on reserved FM allotment filings, the freeze will include all reserved and non-reserved band minor change applications and amendments. The Bureau also is announcing a freeze, effective immediately, on the filing of applications proposing to modify the reference coordinates of any of the vacant reserved FM allotments listed in Attachment A, and petitions and counterproposals that propose a change in channel, class, community, or reference coordinates for any of the vacant reserved FM allotments listed in Attachment A. This freeze is necessary to promote transparency and predictability for window filers. It also is designed to provide sufficient time for applicants and consulting engineers to verify the availability of spectrum and perfect applications, while minimizing expenditures on facility proposals that otherwise could be blocked by minor change filings immediately prior to the opening of the window.

For additional information, contact:

Assistance with FRN numbers and passwords: FRN Help Desk 1-(877) 480-3201, Option 4

Electronic filing assistance: Konrad Herling or David Trout, (202) 418-2662

Legal inquiries: Peter H. Doyle, (202) 418-2700

Engineering inquiries: James Bradshaw or Rudy Bonacci, (202) 418-2700

By: Chief, Media Bureau

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¹⁶ See, e.g., *William F. and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974); 62 *Broadcasting*, Decision, 4 FCC Rcd 1768 (1989); *South Florida Broadcasting*, Memorandum Opinion and Order, 57 RR2d 495 (1984).

¹⁷ See Form 340, Section II, Question 15.